

TYRONE P. JAMES V. YORK COUNTY POLICE DEPARTMENT, ET. AL.,
CASE ACTION NO. 01:01-CV-1015

EXHIBIT "1"

1 cut into and had been pulled back, and I could see
2 marijuana underneath the duct tape.

3 Q. Did you have to do anything to this box in order
4 to see the marijuana that was inside there?

5 A. No.

6 Q. Had you asked anybody to open that box prior to
7 you arriving there?

8 A. No.

9 Q. Did you ask anybody to open the box for you
10 while you were there?

11 A. No.

12 Q. Now, you said you identified it as marijuana.
13 Is this based on just how it looked or what did you ba
14 that decision on?

15 A. Based on the numerous times I've seen marijuana,
16 marijuana packaged in a similar fashion, and my training
17 and experience over the years.

6. And what did you do at that point?

19 A. I seized the parcel and gave a receipt to Mike
20 Baker and took the parcel back to my office.

21 *EMP* Q. Okay. At any point, did you field test what you
22 thought to be marijuana in that package?

23 A. Just prior to placing it in temporary evidence,
24 yes.

25 Q. And did it indicate a positive or a negative

1 response for marijuana?

2 A. The field test tested positive for marijuana.

3 Q. Now, at some point then did you have contact
4 with Agent Morgan from the Attorney General's Office in
5 Pennsylvania?

6 A. Yes, I did.

7 Q. And without going into the specifics of your
8 conversation with him, did you relate to him the
9 information that you had gathered from the Mail Boxes,

10 Etc.?

11 A. Yes.

12 Q. Did you describe for him what you had found?

13 A. Yes, I did.

14 Q. And did you describe for him the parcel; in
15 particular, what it looked like and things of that
16 nature?

17 A. Yes.

18 ATTORNEY SINNETT: I don't have any further
19 questions of this witness at this time, Your Honor.

20 ATTORNEY NERO: May I, Your Honor?

21 THE COURT: Yes.

22 * * *

23 CROSS EXAMINATION

24 BY ATTORNEY NERO:

25 Q. Good afternoon, Agent Sipes.

1 A. Good afternoon.

2 Q. Now, you said you got a call from Mike Baker,
3 correct?

4 A. Yes, sir.

5 Q. Where did he call you?

6 A. Excuse me.

7 Q. Where did he call you?

8 A. At my office.

9 Q. Did you know the gentleman before?

10 A. No.

11 Q. Never knew him?

12 A. No.

13 Q. Had you been to that facility before?

14 A. Yes.

15 Q. How many times in the past?

16 A. Once.

17 Q. And would it be fair to say that you went there
18 in connection with some sort of drug activity?

19 A. No.

20 Q. When you went to the facility before, did you
21 meet Mike Baker?

22 A. I don't believe so. I don't recall. I wasn't
23 there that long.

24 Q. How about any of the employees? Did you meet
25 any employees before when you went there?

1 A. The one person I spoke to, but I don't recall
2 who it was.

3 Q. Was it a male or female?

4 A. I believe it was a female. It was about a year
5 prior.

6 Q. And your number at work is a direct number, your
7 telephone number?

8 A. To the office, yes, not to me.

9 Q. To the office?

10 A. Yes.

11 Q. And when you got on the line is it fair to say
12 that Mike Baker was on the line?

13 A. Yes.

14 Q. Okay. So in other words it wasn't a third
15 person or somebody else putting through Mike Baker to
16 you?

17 A. No.

18 Q. Okay. And would it be fair to say that he knew
19 what you did?

20 A. Yes.

21 Q. Yeah. And you base that on the fact that he
22 contacted you?

23 A. Yes.

24 Q. Do you know whether or not your number was
25 supplied to Mr. Mike Baker to contact you or your office

1 at any time?

2 A. Yes.

3 Q. It was?

4 A. Yes.

5 Q. Okay. And in addition to the number being
6 supplied, do you know whether or not there was a memo of
7 some kind supplied to the agency, a memo saying contact
8 us if X, Y, Z or what have you?

9 A. Yes.

10 Q. There was?

11 A. Yes.

12 Q. So I am correct in saying that your agency had
13 notified Mail Boxes, Etc., to contact you if anything
14 suspicious is observed?

15 A. No.

16 Q. Well, you just told us there was a memorandum
17 there stating to call you. What did the memorandum say?

18 A. I had about a year prior contacted several Mail
19 Boxes, Etc., in the area that my office is in and left a
20 business card and basically a sheet of paper saying that
21 if you suspect a drug parcel you can contact me at this
22 number.

23 Q. That's precisely what I was asking. So you did
24 do that?

25 A. Yes.

1 Q. Do you have a copy of the information you left
2 with you?

3 A. No, I don't.

4 Q. But it basically said if you suspect a drug
5 parcel call us?

6 A. Yes.

7 Q. And I would be right, would I not, that you had
8 received calls from other facilities before?

9 A. Yes, one other time.

10 Q. And so when you said you did not know Mike Baker
11 personally, you did not know him but his facility was
12 known to you because you had left your card to be
13 contacted?

14 A. Yes.

15 Q. How many cards did you leave?

16 A. One.

17 Q. Do you know whether or not you asked him to post
18 the card and/or the memo in his facility?

19 A. I believe he put the card in a card holder.

20 Q. And would I be correct in stating that since you
21 received a call it meant that the visit you paid earlier
22 had paid off for you?

23 A. Yes, sir.

24 Q. And so having directed them to call you if they
25 saw any suspicious packages you were called and you went?

1 A. I didn't direct them to call me, no.

2 Q. I'm lost. Did you not tell us then earlier that
3 you left your card and you left instructions to call you
4 if they saw any suspicious package?

5 A. Yes.

6 Q. Okay. That's what I'm saying. You did do that?

7 A. Yes, I did that, yes.

8 Q. And on the date in question they called you and
9 said to you we saw a package that looks suspicious?

10 A. Yes.

11 Q. Okay. You then went and saw the package?

12 A. Yes.

13 Q. Did you weigh the package when you got there?

14 A. No.

15 Q. And are you -- You are aware, are you not, that
16 many substances could be compressed to look like
17 marijuana?

18 A. Possibly.

19 Q. In fact, the reason that you field tested the
20 items found was because you wanted to make sure that the
21 substance was marijuana?

22 A. Yes.

23 Q. Now, you saw, I believe you described, an open
24 package on the floor?

25 A. Yes.

1 Q. Who directed you to that package?

2 A. Mike Baker.

3 Q. And you said inside that open package was
4 another package?

5 A. Correct.

6 Q. And inside that package I believe you described
7 duct tape and various other items?

8 A. Yes.

9 Q. So would it be all of these items then that the
10 marijuana was --

11 A. Yes.

12 Q. Okay. Would I be correct in stating that you
13 had to then move aside the duct tape and other items to
14 see the marijuana?

15 A. No.

16 Q. What portion of the alleged marijuana did you
17 see?

18 A. The duct taped object inside the inner box
19 had -- a triangle had been cut into the duct tape and the
20 duct tape had been folded back so it was on top of that
21 duct taped object inside the box.

22 Q. And this was what, one brick?

23 A. Yes.

24 Q. How large was the brick?

25 A. I would guess maybe 8 inches by 12 inches across

1 the top.

2 Q. And you could see the entire 8 by 12 inches?

3 A. Yes.

4 Q. I believe you testified that you then called
5 Agent Morgan?

6 A. No.

7 Q. You didn't call him?

8 A. No.

9 Q. He called you?

10 A. Yes.

11 Q. Did you call anybody in Pennsylvania?

12 A. Yes, I did.

13 Q. What time did you receive the call from Mike
14 Baker?

15 A. It was about 2:15 in the afternoon.

16 Q. What time did you arrive at the facility?

17 A. About 2:30.

18 Q. What time did you do the field test? *imp*

19 A. About 3:00 o'clock.

20 Q. And what time did you make the call to
21 Pennsylvania?

22 A. The first call I made was around 3:00 o'clock.

23 I made it from the store.

24 Q. From the store?

25 A. Yes, from my cell phone at the store.

1 Q. What type of field test did you do?

2 A. It's a -- a color test.

3 Q. Color test?

4 A. Yeah, chemical color test.

5 Q. And the color changed and told you that
6 substance was marijuana?

7 A. Yes.

8 Q. Do you recall what day this was? Day of the
9 week I mean.

10 A. No. No.

11 Q. You don't recall.

12 Q. Was it a weekday, weekend?

13 A. It was a weekday.

14 Q. And I am correct in that you never got a
15 warrant, search warrant?

16 A. Correct.

17 Q. Now, you prepared a property receipt?

18 A. Yes.

19 Q. Okay. And the property receipt you prepared,
20 what was the weight of the box that you opened?

21 A. The total weight was approximately 14 pounds.

22 Q. And the box that you shipped, what was the
23 weight of that?

24 A. I believe it was 15 pounds.

25 Q. 15 pounds --

1 A. Yes.

2 Q. -- that you shipped?

3 So according to what you're telling us the
4 package you shipped was heavier than the package that you
5 received?

6 A. Correct.

7 Q. Did you discard any items from the 14 pounds,
8 from the package or did you package it as it was
9 initially?

10 A. Discard items? No.

11 Q. So you sent the original package?

12 A. Yes.

13 Q. You sent the duct tape?

14 A. Yes.

15 Q. You sent everything?

16 A. Yes.

17 Q. I'd like to show you then what was supplied to
18 me as a property receipt that you prepared.

19 ATTORNEY NERO: And if I could have it
20 marked as D-1.

21 * * *

22 (Whereupon, Defendant's Exhibit No. 1 was
23 produced and marked for identification.)

24 * * *

25 BY ATTORNEY NERO:

1 Q. Can you look at this, please?

2 A. Okay.

3 Q. What does it say?

4 A. It says one brown cardboard box with
5 approximately 14 pounds of marijuana.

6 Q. Okay.

7 ATTORNEY NERO: Can you mark this D-2?

8 * * *

9 (Whereupon, Defendant's Exhibit No. 2 was
10 produced and marked for identification.)

11 * * *

12 ATTORNEY NERO: Do you have this as well?

13 * * *

14 BY ATTORNEY NERO:

15 Q. This is a property receipt from California as
16 well. Could you tell us what's on it?

17 A. It says Item No. 1, 9.72 pounds approximate
18 weight of marijuana including packaging and shipping
19 boxes.

20 Q. Including packaging and shipping boxes?

21 A. Correct.

22 Q. And you just told us, I believe, that you
23 shipped a package that was 15 pounds.

24 A. Yes.

25 Q. Okay. So you would agree that this property

1 receipt does not reflect the package that you shipped?

2 A. Yes, it does.

3 Q. 9.72 pounds?

4 A. That was the weight of the marijuana.

5 Q. It does not say including packaging and shipping

6 boxes on it?

7 A. Yes.

8 Q. And I'm correct in that if it says including
9 that it means a total weight of everything?

10 A. No, that's not correct.

11 Q. Well, could you read it for us again?

12 A. Sure.

13 ATTORNEY SINNETT: Your Honor, at this

14 point I just want to lodge an objection. What the weight
15 of the box has to do with whether or not -- Just hold on
16 a second -- whether the officer had probable cause at the
17 time he was at the Mail Boxes in California, that's what
18 we're dealing with, not the weight of the boxes.

19 ATTORNEY NERO: The question, too, Judge,

20 could be whether we're talking about the same box. He's
21 saying he shipped a box weighing 15 pounds, and this
22 officer with the California receipt is saying 9.7 pounds
23 including packaging and shipping boxes. I think it's
24 probative as to whether or not the same box was shipped.
25 Clearly we're talking about 4 point something pounds in

1 weight.

2 THE COURT: Overruled. I'll allow it.

3 * * *

4 BY ATTORNEY NERO:

5 Q. Now, the box -- So you agree with me then that
6 9.72 is not what you sent?

7 A. The 9.72 pounds was the weight of the marijuana.

8 Q. So if when it's written down here including
9 packaging and shipping boxes, that's not correct?

10 A. Not in the weight, no. What he was signing a
11 receipt for, that's correct. He was signing the receipt
12 for 9.72 pounds of marijuana and the shipping materials.

13 Q. When did you prepare your report?

14 A. I believe it was three days later.

15 Q. Three days later. And is this the report that
16 you prepared?

17 A. Yes, it is.

18 Q. Do you have a copy of the report you prepared?

19 A. I do. Not in front of me.

20 Q. Would it surprise you if I showed you that this
21 report was signed on January 30th?

22 A. No.

23 Q. Wouldn't surprise you?

24 A. No.

25 Q. Would it surprise you if I told you that nowhere

1 on the report does the 11th or 12th or 13th or any date
2 like that, which would be three days after this, show up?

3 A. That would surprise me, yes.

4 Q. It would?

5 A. Yes.

6 ATTORNEY NERO: Can I approach, Your Honor?

7 THE COURT: You may.

8 * * *

9 (Whereupon, Defendant's Exhibit No. 3 was
10 produced and marked for identification.)

11 * * *

12 BY ATTORNEY NERO:

13 Q. Could you look at this report marked D-3 and
14 tell me what date's on it? You can look at all three
15 pages.

16 A. Do you want to know the date the report was
17 done?

18 Q. Yes.

19 A. The 19th.

20 Q. And it was signed on the 30th?

21 A. Correct.

22 Q. So you prepared it and signed it -- Prepared it
23 the 19th, signed it the 30th?

24 A. Correct. My supervisor signed it and then I
25 signed it.

1 Q. And you would agree that the 19th is eleven days
2 after?

3 A. Yes.

4 Q. So when you said three days after you didn't
5 really mean that?

6 A. I wasn't sure. I thought it was about three
7 days.

8 Q. When you shipped the package, would I be correct
9 in saying that you placed your own label on it? The
10 package you shipped to officer or Agent Morgan that is.

11 A. Yes.

12 Q. How did you do that?

13 A. I took the marijuana and both boxes and the
14 package material, placed all of that inside another box,
15 and then sealed that and shipped that.

16 Q. Okay. How did you prepare the label?

17 A. It was a regular UPS label.

18 Q. So you prepared the label yourself?

19 A. We have an account with UPS so we have pre-made
20 labels.

21 Q. So the label you sent was from your office to
22 Agent Morgan?

23 A. Correct.

24 Q. What type of box was it?

25 ATTORNEY SINNETT: Your Honor, at this

1 point, this is well past --

2 THE COURT: Now we're getting far afield,

3 Attorney Nero.

4 ATTORNEY NERO: Say it again.

5 THE COURT: Now we're getting far afield.

6 * * *

7 BY ATTORNEY NERO:

8 Q. And again -- this is a final question, Judge --
9 you never got a warrant in this case?

10 A. Correct.

11 ATTORNEY NERO: I have no further
12 questions.

13 ATTORNEY SINNETT: No redirect of this
14 witness.

15 THE COURT: Agent Sipes, you may step down.

16 ATTORNEY SINNETT: Your Honor, with that
17 the Commonwealth wouldn't be offering anymore evidence.
18 I believe -- I don't have a copy of the suppression
19 transcript from before, but I believe the Court obviously
20 was aware of everything that happened then. Just also I
21 filed a brief, a Commonwealth's brief, in support of the
22 denial of the Defendant's suppression motion. Did the
23 Court get a copy of that?

24 THE COURT: I'm looking at it now, Mr.
25 Sinnott.